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HOUSE BILL 283

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Anna M. Crook

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; AMENDING THE TAX ADMINISTRATION ACT;
AMENDING PROVISIONS REGARDING CONFIDENTIALITY OF TAX RETURNS
AND OTHER INFORMATION; INCREASING THE SECRETARY OF TAXATION AND
REVENUE' S ABATEMENT AUTHORITY; AMENDING PROVISIONS REGARDING
INSTALLMENT PAYMENTS, REFUNDS, HEARINGS AND INTEREST.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-1-8 NMSA 1978 (being Laws 1965,
Chapter 248, Section 13, as amended) is amended to read:

"7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER
INFORMATION. --It is unlawful for ~~any~~ an employee of the
department or ~~any~~ a former employee of the department to
reveal to ~~any~~ an individual other than another employee of
the department, ~~any~~ information contained in the return of
~~any~~ a taxpayer made pursuant to ~~any~~ a law subject to

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1 administration and enforcement under the provisions of the Tax
2 Administration Act or any other information about ~~any~~ a
3 taxpayer acquired as a result of his employment by the
4 department and not available from public sources, except:

5 A. to an authorized representative of another
6 state; provided that the receiving state has entered into a
7 written agreement with the department to use the information
8 for tax purposes only and that the receiving state has enacted
9 a confidentiality statute similar to this section to which the
10 representative is subject;

11 B. to a representative of the secretary of the
12 treasury or the secretary's delegate pursuant to the terms of a
13 reciprocal agreement entered into with the federal government
14 for exchange of the information;

15 C. to the multistate tax commission or its
16 authorized representative; provided that the information is
17 used for tax purposes only and is disclosed by the multistate
18 tax commission only to states that have met the requirements of
19 Subsection A of this section;

20 D. to a district court, ~~or~~ an appellate court or
21 a federal court:

22 (1) in response to an order thereof in an
23 action relating to taxes to which the state is a party and in
24 which the information sought is about a taxpayer who is party
25 to the action and is material to the inquiry, in which case

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1 only that information may be required to be produced in court
2 and admitted in evidence subject to court order protecting the
3 confidentiality of the information and no more;

4 (2) in [~~any~~] an action in which the department
5 is attempting to enforce an act with which the department is
6 charged or to collect a tax; or

7 (3) in any matter in which the department is a
8 party and the taxpayer has put his own liability for taxes at
9 issue, in which case only that information regarding the
10 taxpayer who is party to the action may be produced, but this
11 shall not prevent the disclosure of department policy or
12 interpretation of law arising from circumstances of a taxpayer
13 who is not a party;

14 E. to the taxpayer or to the taxpayer's authorized
15 representative; provided, however, that nothing in this
16 subsection shall be construed to require any employee to
17 testify in a judicial proceeding except as provided in
18 Subsection D of this section;

19 F. information obtained through the administration
20 of [~~any~~] a law not subject to administration and enforcement
21 under the provisions of the Tax Administration Act to the
22 extent that release of that information is not otherwise
23 prohibited by law;

24 G. in [~~such~~] a manner, for statistical purposes,
25 that the information revealed is not identified as applicable

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1 to [~~any~~] an individual taxpayer;

2 H. with reference to [~~any~~] information concerning
3 the tax on tobacco imposed by Sections 7-12-1 through 7-12-13
4 and Sections 7-12-15 and 7-12-17 NMSA 1978 to a committee of
5 the legislature for a valid legislative purpose or to the
6 attorney general for purposes of Section 6-4-13 NMSA 1978 and
7 the master settlement agreement defined in Section 6-4-12 NMSA
8 1978;

9 I. to a transferee, assignee, buyer or lessor of a
10 liquor license, the amount and basis of [~~any~~] an unpaid
11 assessment of tax for which his transferor, assignor, seller or
12 lessee is liable;

13 J. to a purchaser of a business as provided in
14 Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis
15 of [~~any~~] an unpaid assessment of tax for which the purchaser's
16 seller is liable;

17 K. to a municipality of this state upon its request
18 for [~~any~~] a period specified by that municipality within the
19 twelve months preceding the request for the information by that
20 municipality:

21 (1) the names, taxpayer identification numbers
22 and addresses of registered gross receipts taxpayers reporting
23 gross receipts for that municipality under the Gross Receipts
24 and Compensating Tax Act or a local option gross receipts tax
25 imposed by that municipality. The department may also release

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1 the information described in this paragraph quarterly or upon
2 such other periodic basis as the secretary and the municipality
3 may agree; and

4 (2) information indicating whether persons
5 shown on ~~[any]~~ a list of businesses located within that
6 municipality furnished by the municipality have reported gross
7 receipts to the department but have not reported gross receipts
8 for that municipality under the Gross Receipts and Compensating
9 Tax Act or a local option gross receipts tax imposed by that
10 municipality.

11 The employees of municipalities receiving information as
12 provided in this subsection shall be subject to the penalty
13 contained in Section 7-1-76 NMSA 1978 if that information is
14 revealed to individuals other than other employees of the
15 municipality in question or the department;

16 L. to the commissioner of public lands for use in
17 auditing that pertains to rentals, royalties, fees and other
18 payments due the state under land sale, land lease or other
19 land use contracts; the commissioner of public lands and
20 employees of the commissioner are subject to the same
21 provisions regarding confidentiality of information as
22 employees of the department;

23 M the department shall furnish, upon request by
24 the child support enforcement division of the human services
25 department, the last known address with date of all names

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1 certified to the department as being absent parents of children
2 receiving public financial assistance. The child support
3 enforcement division personnel shall use such information only
4 for the purpose of enforcing the support liability of the
5 absent parents and shall not use the information or disclose it
6 for any other purpose; the child support enforcement division
7 and its employees are subject to the provisions of this section
8 with respect to any information acquired from the department;

9 N. with respect to the tax on gasoline imposed by
10 the Gasoline Tax Act, the department shall make available for
11 public inspection at monthly intervals a report covering the
12 [~~amount and gallonage~~] number of gallons of gasoline and
13 ethanol blended fuels [~~imported, exported, sold and used,~~
14 ~~including tax exempt sales to the federal government reported~~
15 ~~or upon which the gasoline tax was paid and covering taxes~~
16 ~~received from each distributor~~] received and deducted, and the
17 amount of tax paid by each person required to file a gasoline
18 tax return or pay gasoline tax in the state of New Mexico;

19 0. the identity of [~~distributors and gallonage~~] a
20 rack operator, importer, blender, supplier or distributor and
21 the number of gallons reported on returns required under the
22 Gasoline Tax Act, Special Fuels Supplier Tax Act or Alternative
23 Fuel Tax Act to [~~any~~] a rack operator, importer, blender,
24 distributor or supplier, but only when it is necessary to
25 enable the department to carry out its duties under the

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1 Gasoline Tax Act, the Special Fuels Supplier Tax Act or the
2 Alternative Fuel Tax Act;

3 P. the department shall release upon request only
4 the names and addresses of all gasoline or special fuel
5 distributors, wholesalers and retailers to the New Mexico
6 department of agriculture, the employees of which are thereby
7 subject to the penalty contained in Section 7-1-76 NMSA 1978 if
8 that information is revealed to individuals other than
9 employees of either the New Mexico department of agriculture or
10 the department;

11 Q. the department shall answer all inquiries
12 concerning whether a person is or is not a registered taxpayer;

13 R. upon request of a municipality or county of this
14 state, the department shall permit officials or employees of
15 the municipality or county to inspect the records of the
16 department pertaining to an increase or decrease to a
17 distribution or transfer made pursuant to Section 7-1-6.15 NMSA
18 1978 for the purpose of reviewing the basis for the increase or
19 decrease. The municipal or county officials or employees
20 receiving information provided in this subsection shall not
21 reveal that information to any person other than another
22 employee of the municipality or the county, the department or a
23 district court, an appellate court or a federal court in a
24 proceeding relating to a disputed distribution and in which
25 both the state and the municipality or county are parties.

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1 [Any] Information provided pursuant to provisions of this
2 subsection that is revealed other than as provided in this
3 subsection shall subject the person revealing the information
4 to the penalties contained in Section 7-1-76 NMSA 1978;

5 S. to a county of this state that has in effect
6 [any] a local option gross receipts tax imposed by the county
7 upon its request for [any] a period specified by that county
8 within the twelve months preceding the request for the
9 information by that county:

10 (1) the names, taxpayer identification numbers
11 and addresses of registered gross receipts taxpayers reporting
12 gross receipts either for that county in the case of a local
13 option gross receipts tax imposed on a countywide basis or only
14 for the areas of that county outside of any incorporated
15 municipalities within that county in the case of a county local
16 option gross receipts tax imposed only in areas of the county
17 outside of any incorporated municipalities. The department may
18 also release the information described in this paragraph
19 quarterly or upon such other periodic basis as the secretary
20 and the county may agree;

21 (2) in the case of a local option gross
22 receipts tax imposed by a county on a countywide basis,
23 information indicating whether persons shown on [any] a list of
24 businesses located within the county furnished by the county
25 have reported gross receipts to the department but have not

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1 reported gross receipts for that county under the Gross
2 Receipts and Compensating Tax Act or a local option gross
3 receipts tax imposed by that county on a countywide basis; and

4 (3) in the case of a local option gross
5 receipts tax imposed by a county only on persons engaging in
6 business in that area of the county outside of [any]
7 incorporated municipalities, information indicating whether
8 persons [shown] on [any] a list of businesses located in [the
9 area of] that county outside of [any] the incorporated
10 municipalities but within that county furnished by the county
11 have reported gross receipts to the department but have not
12 reported gross receipts for [the area of] that county outside
13 of [any] the incorporated municipalities within that county
14 under the Gross Receipts and Compensating Tax Act or [any] a
15 local option gross receipts tax imposed by the county only on
16 persons engaging in business in that [area of the] county
17 outside of [any] the incorporated municipalities.

18 The officers and employees of counties receiving
19 information as provided in this subsection shall be subject to
20 the penalty contained in Section 7-1-76 NMSA 1978 if [such] the
21 information is revealed to individuals other than other
22 officers or employees of the county in question or the
23 department;

24 T. to authorized representatives of an Indian
25 nation, tribe or pueblo, the territory of which is located

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1 wholly or partially within New Mexico, pursuant to the terms of
2 a reciprocal agreement entered into with the Indian nation,
3 tribe or pueblo for the exchange of that information for tax
4 purposes only; provided that the Indian nation, tribe or pueblo
5 has enacted a confidentiality statute similar to this section;

6 U. information with respect to the taxes or tax
7 acts administered pursuant to Subsection B of Section 7-1-2
8 NMSA 1978, except that:

9 (1) information for or relating to ~~[any]~~ a
10 period prior to July 1, 1985 with respect to Sections 7-25-1
11 through 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978 ~~may~~ be
12 released only to a committee of the legislature for a valid
13 legislative purpose;

14 (2) except as provided in Paragraph (3) of
15 this subsection, contracts and other agreements between the
16 taxpayer and other parties and the proprietary information
17 contained in ~~[such]~~ those contracts and agreements shall not be
18 released without the consent of all parties to the contract or
19 agreement; and

20 (3) audit workpapers and the proprietary
21 information contained in ~~[such]~~ the workpapers shall not be
22 released except to:

23 (a) the minerals management service of
24 the United States department of the interior, if production
25 occurred on federal land;

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1 (b) a person having a legal interest in
2 the property that is subject to the audit;

3 (c) a purchaser of products severed from
4 a property subject to the audit; or

5 (d) the authorized representative of any
6 of the persons in Subparagraphs (a) through (c) of this
7 paragraph. This paragraph does not prohibit the release of
8 [any] proprietary information contained in the workpapers that
9 is also available from returns or from other sources not
10 subject to the provisions of this section;

11 V. information with respect to the taxes, surtaxes,
12 advance payments or tax acts administered pursuant to
13 Subsection C of Section 7-1-2 NMSA 1978;

14 W. to the public regulation commission, information
15 with respect to the Corporate Income and Franchise Tax Act
16 required to enable the commission to carry out its duties;

17 X. to the state racing commission, information with
18 respect to the state, municipal and county gross receipts taxes
19 paid by race tracks;

20 Y. upon request of a corporation authorized to be
21 formed under the Educational Assistance Act, the department
22 shall furnish the last known address and the date of that
23 address of every person certified to the department as [being]
24 an absent obligor of an educational debt [that is] due and owed
25 to the corporation or that the corporation has lawfully

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1 contracted to collect. The corporation and its officers and
2 employees shall use that information only [~~for the purpose of~~
3 ~~enforcing~~] to enforce the educational debt obligation of [~~such~~]
4 the absent obligors and shall not disclose that information or
5 use it for any other purpose;

6 Z. [~~any~~] a decision and order made by a hearing
7 officer pursuant to Section 7-1-24 NMSA 1978 with respect to a
8 protest filed with the secretary on or after July 1, 1993;

9 AA. information required by [~~any~~] a provision of
10 the Tax Administration Act to be made available to the public
11 by the department;

12 BB. upon request by the Bernalillo county
13 metropolitan court, the department shall furnish the last known
14 address and the date of that address for every person
15 [~~certified to the department by~~] the court certifies to the
16 department as [~~being~~] a person who owes fines, fees or costs to
17 the court or who has failed to appear pursuant to a court order
18 or a promise to appear;

19 CC. upon request by a magistrate court, the
20 department shall furnish the last known address and the date of
21 that address for every person [~~certified to the department by~~]
22 the court certifies to the department as [~~being~~] a person who
23 owes fines, fees or costs to the court or who has failed to
24 appear pursuant to a court order or a promise to appear;

25 DD. to the national tax administration agencies of

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1 Mexico and Canada, provided the agency receiving the
2 information has entered into a written agreement with the
3 department to use the information for tax purposes only and is
4 subject to a confidentiality statute similar to this section;

5 EE. to a district attorney, a state district court
6 grand jury or federal grand jury [~~with respect to any~~] for an
7 investigation of or proceeding related to an alleged criminal
8 violation of the tax laws; [~~and~~]

9 FF. to a third party subject to a subpoena or levy
10 issued pursuant to the provisions of the Tax Administration
11 Act, the identity of the taxpayer involved, the taxes or tax
12 acts involved and the nature of the proceeding; and

13 GG. to the gaming control board, tax returns of
14 license applicants and their affiliates as defined in
15 Subsection E of Section 60-2E-14 NMSA 1978. "

16 Section 2. Section 7-1-21 NMSA 1978 (being Laws 1965,
17 Chapter 248, Section 23, as amended) is amended to read:

18 "7-1-21. INSTALLMENT PAYMENTS OF TAXES--INSTALLMENT
19 AGREEMENTS. --

20 A. Whenever justified by the circumstances, the
21 secretary or the secretary's delegate may enter into a written
22 agreement with [~~any~~] a taxpayer [~~wherein~~] in which the taxpayer
23 admits conclusive liability for the entire amount of taxes due
24 and agrees to make monthly installment payments [~~thereof~~]
25 according to the terms of the agreement, but not for a period

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1 longer than [~~thirty-six~~] sixty months. No installment
2 agreement shall prevent the accrual of interest [~~as~~] otherwise
3 provided by law.

4 B. The agreement provided for in this section is to
5 be known as an "installment agreement". If entered into after
6 [~~any~~] a court acquires jurisdiction [~~of~~] over the matter, the
7 agreement shall be part of a stipulated order or judgment
8 disposing of the case.

9 C. At the time of entering into an installment
10 agreement, the secretary shall require the affected taxpayer or
11 person to furnish security for payment of the taxes admitted to
12 be due according to the terms of the agreement, but if the
13 taxpayer does not provide security, the secretary shall cause a
14 notice of lien to be filed in accordance with the provisions of
15 Section 7-1-38 NMSA 1978, and when so filed it shall constitute
16 a lien upon all the property or rights to property of the
17 taxpayer in that county in the same manner as in the case of
18 the lien provided for in Section 7-1-37 NMSA 1978.

19 D. An installment agreement is conclusive as to
20 liability for payment of the amount of taxes specified therein
21 but does not preclude the assessment of any additional tax.

22 E. After entering into the agreement, except in
23 unusual circumstances as require the secretary in his
24 discretion to take further action to protect the interests of
25 the state, no further attempts to enforce payment of the tax by

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1 levy or injunction shall be made; however, if installment
2 payments are not made on or before the times specified in the
3 agreement, if any other condition contained in the agreement is
4 not met or if the taxpayer does not make payment of all other
5 taxes for which he becomes liable as they ~~fall~~ are due, the
6 secretary may proceed to enforce collection of the tax as if
7 the agreement had not been made or may proceed, as provided in
8 Section 7-1-54 NMSA 1978, against the security furnished.

9 F. Records of installment agreements in excess of
10 one thousand dollars (\$1,000) shall be available for inspection
11 by the public. The department shall keep ~~such~~ the records
12 for a minimum of three years from the date of the installment
13 agreement. "

14 Section 3. Section 7-1-28 NMSA 1978 (being Laws 1965,
15 Chapter 248, Section 30, as amended) is amended to read:

16 "7-1-28. AUTHORITY FOR ABATEMENTS OF ASSESSMENTS OF
17 TAX. --

18 A. In response to a written protest against an
19 assessment, submitted in accordance with the provisions of
20 Section 7-1-24 NMSA 1978, but before any court acquires
21 jurisdiction of the matter, or when a "notice of assessment of
22 taxes" is ~~found to be~~ incorrect, the secretary or the
23 secretary's delegate, with ~~the~~ prior written approval of the
24 attorney general, may abate any part of an assessment
25 determined by the secretary or the secretary's delegate to have

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1 been incorrectly, erroneously or illegally made, except that
2 the secretary or the secretary's delegate may make abatements:

3 (1) [~~abatements~~] with respect to the Oil and
4 Gas Severance Tax Act, the Oil and Gas Conservation Tax Act,
5 the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad
6 Valorem Production Tax Act, the Natural Gas Processors Tax Act
7 or the Oil and Gas Production Equipment Ad Valorem Tax Act,
8 abatements of gasoline tax made under Section 7-13-17 NMSA 1978
9 and abatements of cigarette tax made under the Cigarette Tax
10 Act [~~may be made~~] without the prior approval of the attorney
11 general regardless of the amount;

12 (2) [~~abatements~~] with respect to the Corporate
13 Income and Franchise Tax Act amounting to less than twenty
14 thousand dollars (\$20,000) [~~may be made~~] without prior approval
15 of the attorney general; and

16 (3) [~~abatements~~] amounting to less than [~~five~~
17 ~~thousand dollars~~ (~~\$5,000~~) ~~may be made~~] ten thousand dollars
18 (\$10,000) without the prior written approval of the attorney
19 general.

20 B. Pursuant to the final order of the district
21 court for Santa Fe county, the court of appeals, the supreme
22 court of New Mexico or any federal court, from which order,
23 appeal or review is not successfully taken by the department,
24 adjudging that any person is not required to pay any portion of
25 tax assessed to that person, the secretary or the secretary's

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1 delegate shall cause that amount of the assessment to be
2 abated.

3 C. Pursuant to a compromise of taxes agreed to by
4 the secretary and according to the terms of the closing
5 agreement formalizing the compromise, the secretary or the
6 secretary's delegate shall cause the abatement of the
7 appropriate amount of any assessment of tax.

8 D. The secretary or the secretary's delegate shall
9 cause the abatement of the amount of an assessment of tax that
10 is equal to the amount of fee paid to or retained by an out-of-
11 state attorney or collection agency from a judgment or the
12 amount collected by the attorney or collection agency pursuant
13 to Section 7-1-58 NMSA 1978.

14 E. Records of abatements made in excess of [five
15 ~~thousand dollars (\$5,000)] ten thousand dollars (\$10,000) shall
16 be available for inspection by the public. The department
17 shall keep such records for a minimum of three years from the
18 date of the abatement."~~

19 Section 4. Section 7-1-29 NMSA 1978 (being Laws 1965,
20 Chapter 248, Section 31, as amended) is amended to read:

21 "7-1-29. AUTHORITY TO MAKE REFUNDS OR CREDITS. --

22 A. In response to a claim for refund made as
23 provided in Section 7-1-26 NMSA 1978, but before [any] a court
24 acquires jurisdiction of the matter, the secretary or the
25 secretary's delegate may authorize the refund to a person of

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1 the amount of any overpayment of tax determined by the
2 secretary or the secretary's delegate to have been erroneously
3 made by the person, together with allowable interest. ~~[Any]~~ A
4 refund of tax and interest erroneously paid and amounting to
5 more than ten thousand dollars (\$10,000) may be made to ~~[any~~
6 ~~one]~~ a person only with the prior approval of the attorney
7 general, except that the secretary or the secretary's delegate
8 may make refunds with respect to:

9 (1) ~~[refunds with respect to]~~ the Oil and Gas
10 Severance Tax Act, the Oil and Gas Conservation Tax Act, the
11 Oil and Gas Emergency School Tax Act, the Oil and Gas Ad
12 Valorem Production Tax Act, the Natural Gas Processors Tax Act
13 or the Oil and Gas Production Equipment Ad Valorem Tax Act,
14 ~~[refunds of gasoline tax made under]~~ Section 7-13-17 NMSA 1978
15 and ~~[refunds of cigarette tax made under]~~ the Cigarette Tax Act
16 ~~[may be made]~~ without the prior approval of the attorney
17 general regardless of the amount; and

18 (2) ~~[refunds with respect to]~~ the Corporate
19 Income and Franchise Tax Act amounting to less than twenty
20 thousand dollars (\$20,000) ~~[may be made]~~ without the prior
21 approval of the attorney general.

22 B. Pursuant to the final order of the district
23 court, the court of appeals, the supreme court of New Mexico or
24 ~~[any]~~ a federal court, from which order, appeal or review is
25 not successfully taken, adjudging that ~~[any]~~ a person has made

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1 an overpayment of tax, the secretary shall authorize the refund
2 to the person of the amount thereof.

3 C. In the discretion of the secretary, any amount
4 of tax ~~[due]~~ to be refunded may be offset against any amount of
5 tax for ~~[the payment of]~~ which the person due to receive the
6 refund is liable.

7 D. In an audit by the department or a managed audit
8 covering multiple reporting periods where both underpayments
9 and overpayments of a tax ~~[are found to]~~ have been made in
10 different reporting periods, the department shall credit the
11 tax overpayments ~~[found]~~ against the underpayments, provided
12 that the taxpayer files a claim for refund of the overpayments.
13 An overpayment shall be applied as a credit first to the
14 earliest underpayment ~~[found]~~ and then to succeeding
15 underpayments. An underpayment of tax to which an overpayment
16 is credited pursuant to this section shall be deemed paid in
17 the period in which the overpayment was made or the period ~~[in]~~
18 to which the overpayment was credited against an underpayment,
19 whichever is later. If the overpayments credited pursuant to
20 this section exceed the underpayments ~~[found for]~~ of a tax, the
21 amount of the net overpayment for the periods covered in the
22 audit shall be refunded to the taxpayer.

23 E. When a taxpayer makes a payment identified to a
24 particular return or assessment, and the department determines
25 that the payment exceeds the amount due pursuant to that return

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1 or assessment, the secretary may apply the excess to the
2 taxpayer's other liabilities under the tax acts to which the
3 return or assessment applies, without requiring the taxpayer to
4 file a claim for a refund. The liability to which an
5 overpayment is applied pursuant to this section shall be deemed
6 paid in the period in which the overpayment was made or the
7 period to which the overpayment was applied, whichever is
8 later.

9 F. If the department determines, upon review of an
10 original or amended income tax return, corporate income and
11 franchise tax return, estate tax return, special fuels excise
12 tax return or oil and gas tax return, that there has been an
13 overpayment of tax for the taxable period to which the return
14 or amended return relates in excess of the amount due to be
15 refunded to the taxpayer under the provisions of Subsection J
16 of Section 7-1-26 NMSA 1978, the department may refund that
17 excess amount to the taxpayer without requiring the taxpayer to
18 file a refund claim.

19 ~~[E.]~~ G. Records of refunds made in excess of ten
20 thousand dollars (\$10,000) shall be available for inspection by
21 the public. The department shall keep such records for a
22 minimum of three years from the date of the refund."

23 Section 5. Section 7-1-53 NMSA 1978 (being Laws 1965,
24 Chapter 248, Section 55, as amended) is amended to read:

25 "7-1-53. ENJOINING DELINQUENT TAXPAYER FROM CONTINUING

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1 IN BUSINESS. --

2 A. [~~In order~~] To ensure or to compel payment of
3 taxes and to aid in the enforcement of the provisions of the
4 Tax Administration Act, the secretary may apply to a district
5 court of this state to have any delinquent taxpayer or person
6 who may be or may become liable for payment of any tax enjoined
7 from engaging in business until the delinquent taxpayer ceases
8 to be a delinquent taxpayer or until the delinquent taxpayer or
9 person complies with other requirements, reasonably necessary
10 to protect the revenues of the state, placed on the delinquent
11 taxpayer or person by the secretary.

12 B. Upon application to a court for [~~the issuance~~
13 ~~of~~] an injunction against a delinquent taxpayer, the court may
14 forthwith issue an order temporarily restraining the delinquent
15 taxpayer from doing business. The court shall hear the matter
16 within [~~three~~] fifteen days [~~and~~]. Upon written request of the
17 taxpayer, the hearing may be held earlier. Upon a showing by
18 [~~the~~] a preponderance of the evidence that the taxpayer is
19 delinquent and [~~that the taxpayer~~] has been given notice of the
20 hearing as required by law, the court may enjoin the taxpayer
21 from engaging in business in New Mexico until the taxpayer
22 ceases to be a delinquent taxpayer. Upon issuing an
23 injunction, the court may also order the business premises of
24 the taxpayer [~~to be~~] sealed by the sheriff and may allow the
25 taxpayer access thereto only upon approval of the court.

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1 C. Upon application to a court for ~~[the issuance~~
2 ~~of]~~ an injunction against a person other than a delinquent
3 taxpayer, the court:

4 (1) may issue an order temporarily restraining
5 the person other than the delinquent taxpayer from engaging in
6 business ~~[the court]~~;

7 (2) shall hear the matter within ~~[three]~~
8 fifteen days, ~~[and upon a showing that:~~

9 (1) ~~the person has been given notice of the~~
10 ~~hearing as required by law;~~

11 (2) ~~demand has been made upon the taxpayer for~~
12 ~~the furnishing of security;~~

13 (3) ~~the taxpayer has not furnished security;~~
14 and

15 (4) ~~the secretary considers the collection~~
16 ~~from the person primarily responsible therefor of the total~~
17 ~~amount of tax due or reasonably expected to become due to be in~~
18 ~~jeopardy; the court may forthwith issue an injunction to such~~
19 ~~taxpayer in terms commanding the person to refrain from~~
20 ~~engaging in business until the person complies in full with the~~
21 ~~demand of the department for the furnishing of security] except~~
22 that the hearing may be held earlier if requested in writing by
23 the person who is the subject of the temporary restraining
24 order; and

25 (3) may without delay issue an injunction to

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1 the taxpayer in terms commanding the person who is the subject
2 of the temporary restraining order to refrain from engaging in
3 business until that person complies in full with the demand of
4 the department to furnish security, if there is a showing that:

5 (a) the person who is the subject of the
6 temporary restraining order has been given notice of the
7 hearing for the injunction as required by law;

8 (b) a demand by the department has been
9 made upon the taxpayer to furnish security;

10 (c) the taxpayer has not furnished
11 security; and

12 (d) the secretary considers the
13 collection from the person primarily responsible for the total
14 amount of tax due or reasonably expected to become due to be in
15 jeopardy.

16 D. [Nø] A temporary restraining order or injunction
17 shall not issue by provision of this section against any person
18 who has furnished security in accordance with the provisions of
19 Section 7-1-54 NMSA 1978. Upon a showing to the court by any
20 person against whom a temporary restraining order or writ of
21 injunction has issued by provision of this section that [the]
22 that person has furnished security in accordance with the
23 provisions of Section 7-1-54 NMSA 1978, the court shall
24 dissolve or set aside the temporary restraining order or
25 injunction. "

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1 Section 6. Section 7-1-68 NMSA 1978 (being Laws 1965,
2 Chapter 248, Section 69, as amended) is amended to read:

3 "7-1-68. INTEREST ON OVERPAYMENTS. --

4 A. As provided in this section, interest shall be
5 allowed and paid on the amount of tax overpaid by a person that
6 is subsequently refunded or credited to that person.

7 B. Interest [~~payable~~] on overpayments of tax shall
8 accrue and be paid at the rate of fifteen percent a year,
9 computed on a daily basis; provided that if a different rate is
10 specified by a compact or other interstate agreement to which
11 New Mexico is a party, that rate shall [~~be applied~~] apply to
12 amounts due under the compact or other agreement.

13 C. Unless otherwise provided by this section,
14 interest on an overpayment not arising from an assessment by
15 the department shall be paid from the date of the claim for
16 refund [~~was made~~] until a date preceding by not more than
17 thirty days the date [~~on which the amount thereof is credited~~
18 ~~or refunded~~] of the credit or refund to any person; interest on
19 an overpayment arising from an assessment by the department
20 shall be paid from the date of overpayment [~~was made~~] until a
21 date preceding by not more than thirty days the date [~~on which~~
22 ~~the amount thereof is credited or refunded~~] of the credit or
23 refund to any person.

24 D. No interest shall be allowed or paid with
25 respect to an amount credited or refunded if:

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1 (1) the amount of interest due is less than
2 one dollar (\$1.00);

3 (2) the credit or refund is made within
4 seventy-five days of the date of the claim for refund of:

5 (a) income tax, pursuant to either the
6 Income Tax Act or the Corporate Income and Franchise Tax Act
7 for the tax year immediately preceding the tax year in which
8 the claim is made; or

9 (b) gasoline tax to users of gasoline
10 off the highways;

11 (3) the credit or refund is made within one
12 hundred twenty days of the date of the claim for refund of
13 income tax, pursuant to the Income Tax Act or the Corporate
14 Income and Franchise Tax Act, for any tax year more than one
15 year prior to the year in which the claim is made;

16 (4) Sections 6611(f) and 6611(g) of the
17 Internal Revenue Code, as those sections may be amended or
18 renumbered, prohibit payment of interest for federal income tax
19 purposes;

20 (5) the credit or refund is made within sixty
21 days of the date of the claim for refund of any tax other than
22 income tax;

23 (6) the credit results from overpayments found
24 in an audit of multiple reporting periods and applied to
25 underpayments found in that audit or refunded as a net

1 overpayment to the taxpayer pursuant to Section 7-1-29 NMSA
2 1978;

3 (7) the department applies the credit or
4 refund to an intercept program, to the taxpayer's estimated
5 payment prior to the due date for the estimated payment, or to
6 offset prior liabilities of the taxpayer pursuant to Section
7 7-1-29 NMSA 1978; or

8 (8) the credit or refund results from
9 overpayments the department finds pursuant to Subsection F of
10 Section 7-1-29 NMSA 1978 that exceed the refund claimed by the
11 taxpayer on the return.

12 E. Nothing in this section shall be construed to
13 require the payment of interest upon interest. "

14 Section 7. EFFECTIVE DATE. --The effective date of the
15 provisions of this act is July 1, 2003.

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